

# Body-Worn Cameras: Plan Before Your Office Buys In

By Ken Wallentine, Senior Legal Advisor and Vice President, Lexipol



The Michael Brown shooting in Ferguson, Missouri, and the subsequent Department of Justice (DOJ) investigation prompted many law enforcement agencies to consider body-worn cameras. Some media commentators claim that the public would know all that we need to know about the assault on Officer Darren Wilson and the shooting had he been wearing a body-worn camera. The same claim is heard in many other shootings that capture national headlines. Now President Obama wants to add upward of 50,000 more police body-worn cameras as part of a three-year, \$263-million initiative that would provide a 50 percent match to state and local agencies that purchase body-worn cameras.

Recording law enforcement action is not new. Approximately 120 million smartphones, most with video recording capability, were sold in the United States last year alone. Groups such as COPWATCH are more and more frequently using smartphones to record officers. The American Civil Liberties Union (ACLU) has even launched an app for recording officers and transmitting the video. Sheriff's offices don't have a say in how those recordings are edited and circulated.

Some question the value of the body-worn cameras in relation to their cost. I frequently help defend litigation against deputies and officers accused of excessive force or other improper conduct. The \$500 or \$600 cost of the camera is tiny compared to the cost of defending a lawsuit. If a video recording prevents a lawsuit from being filed in the first place, then the value is truly incalculable.

Despite the public outcry for body-worn cameras for all law enforcement agencies, there are limitations, drawbacks and a great many unknowns that accompany the benefits. A study from the DOJ's Office of Justice Programs reports that:

"Independent research on body-worn camera technology is urgently needed. Most of the claims made by advocates and critics of the technology remain untested. Federal agencies that support research and development should consider providing funding streams for comprehensive research and evaluation of body-worn camera systems. Researchers should examine all aspects of the implementation and impact of the technology—from its perceived civilizing effect, evidentiary benefits, and impact on citizen perceptions of police legitimacy to its consequences for privacy rights, the law enforcement agency, and other outside stakeholders."

Since I began studying the legal, practical and policy issues associated with body-worn cameras several years ago, I've heard from over 500 sheriff's offices and police agencies about their thoughts and experiences on body-worn cameras. The overwhelming common themes that I hear: "We were skeptical, now we love them; public records challenges are compounded; line officers were nervous, now they really like them."

Sometimes those behind the camera lens are trying to goad officers into a reaction. Perhaps that is what happened with the former officer in Ferguson, who became an involuntary YouTube star. In the widely viewed video, the officer approaches the protesters and says "I will f---ing kill you, get

back!” After some crosstalk between protesters, a man asks the officer: “What’s your name, sir?” The officer’s response? “Go f--- yourself.” That response became the title of one of 2014’s mostly frequently viewed YouTube videos.

This perspective isn’t unique to YouTube. Los Angeles television station KTLA carefully edited the Rodney King video that they purchased from a citizen. Most of America saw only what KTLA thought would bring in ratings. What was missing in the Rodney King video and in the infamous Ferguson video? The preamble—the event that lead to direct police-citizen contact.

A deputy wearing a camera decides when to activate the recording, taking cues from agency training and policy. With body-worn cameras, deputies are better able to record the precipitating events. Body-worn cameras are thus a tool to help show that deputies use other tools, including communication skills, properly.

### **Do Deputies— and Citizens – Behave Better When Recorded?**

It’s too early to determine whether body-worn video recording will significantly impact deputy behavior, but intuition and anecdote tell me that it does. Our family discussed this question at a recent Sunday family dinner. My daughter, a deputy sheriff, wears a TASER® Axon camera and likes having her citizen encounters recorded. My son works as an agent for a federal agency that doesn’t record at all. They both agreed that cameras impact officer behavior.

Equally important is the question of whether body-worn video recording will significantly impact citizen behavior. If citizens know that they are on video, they may refrain from behavior that could reasonably require police officers to respond with some measure of force. They may also be less likely to make false claims of deputy misconduct when they know that there is a video recording of their encounter with the deputy.

What we do know is that when there is a video recording, it usually works in the deputy’s favor. A 2004 study by the International Association of Chiefs of Police showed that in cases where video recordings were available, the recordings exonerated the officer 93 percent of the time. Certainly a sheriff wants to know about the 93 percent, when the deputy is

performing well. Moreover, the sheriff needs to know about the 7 percent, when performance is substandard. A video recording may well document misconduct that the sheriff should address.

At Rialto (Calif.) Police Department, Chief William Farrar studied the impact of his agency’s use of body-worn cameras as part of his graduate thesis work at Cambridge University in Great Britain. With support from TASER International, he studied two groups, one equipped with TASER Axon cameras worn on the officers’ eyeglasses and the other without cameras.

Chief Farrar’s results created a great buzz in the public safety world. His study showed that use of body-worn cameras reduced use-of-force incidents by 59 percent and reduced citizens’ complaints by an astonishing 87.5 percent. Mesa (Ariz.) Police Department experienced similar results. Eight months after camera deployment, there were nearly three times more complaints against officers without body-worn cameras. During the pilot program to test the cameras, there were 40 percent fewer total complaints and 75 percent fewer use of force complaints for officers wearing cameras.

Implementation of a body-worn camera program will be much smoother with participation from line deputies. Deputies who understand the technology and who see the benefits may be used as early-adopter ambassadors within the sheriff’s office. One intriguing behavior change among early-adopter camera wearers at the Mesa Police Department was a 20 percent boost in issuing traffic citations.

### **Before Buying**

As a sheriff’s office introduces body-worn cameras into the community, public information officers should reach out through the media to explain the reasons, deployment costs, benefits and limitations of the technology. Consider using the sheriff’s office social media outlets to educate the community.

Body-worn camera use will likely bring an avalanche of public disclosure and media requests. The media will quickly develop an expectation that newsworthy incidents are recorded and that they should quickly get a copy to help them sell their product. Consider whether a particular system has an easy-to-use editing or blurring tool.

In Poulsbo, Wash., a YouTube channel pushed the local police agencies to reconsider the use of body-mounted cameras. “Police Video Requests” anonymously asked Poulsbo Police Department for every minute of body camera video it had ever recorded. The department figures it will take three years to fill that request. Poulsbo Police Chief Al Townsend believes it is a huge privacy concern, as officers often see people on their worst days. “People with mental illness, people in domestic violence situations; do we really want to have to put that video out on YouTube for people? I think that’s pushing it a little bit,” he said. The request prompted the City of Poulsbo to consider suspending or even ending its body camera program.

### **Purchasing Body-Worn Cameras**

The old adages, “You get what you pay for” and “Don’t be penny-wise and pound-foolish” apply to technology purchases. There are many competing body-worn cameras and video data management systems available. If your agency does not have a





more likely your deputies are to actually use the body-worn camera system. At the end of the shift, the easier it is to download and recharge the camera, the more likely it is that the deputy will use the camera on the next shift.

In addition, ask the potential vendors a series of hard questions, and insist on complete and thoughtful answers. Questions to ask a vendor include:

- Who else uses your technology? Can you give me reference contacts?
- How do I show the court that no one had the ability to tamper with this video from the moment of capture to presentation in court?
- How does your system help the clear and efficient workflow of sharing the video with a prosecutor, sheriff's command staff, risk manager and defense attorney?
- How long have you been in the body-worn camera business? How do I know that you will endure as a software as a service (SaaS) company?
- Will you provide our staff with an iTunes or Amazon-like experience? Is your system easy to use?
- What are you doing to enhance our future experience?
- What tools do you have to help me meet public records requests (e.g., easily applied blurring or shadows)?
- What expansion options are available?

## Considerations For Use

When deploying body-worn cameras, think carefully about where to mount the camera. Some systems have a wide range of options, including eyewear mount (and clear lens protective eyewear options), shoulder mount, hat mount or chest mount. The higher the mount, the more closely aligned with the deputy's point of view. Remember, too, that a mid-chest mount may only capture a deputy's hands when he/she draws a firearm or TASER device.

Even when the camera malfunctions, is obscured or is knocked off, the recording may prove useful. One police chief noted, "The videos have been beneficial in investigating use of force by officers. Although sometimes the camera may be obstructed during a physical struggle, the audio recording proves to be very useful."

You should also consider alternative uses of body-worn cameras. Many sheriff's offices corrections divisions are finding value in body-worn cameras inside custody institutions. For example, the Stephenson County (Ill.) Sheriff's Office equipped all of its jail officers with body-worn cameras. They record during security checks and any physical encounters with inmates. In McHenry County (Ill.), corrections officers have worn cameras for several years. The Louisville (Ken.) Metro Detention Center has had great success with body-worn cameras as litigation prevention tools. If body-worn cameras are used in a jail, there must be explicit policy provision for restricting recording in strip searches, showers and other areas of personal privacy. That said, there may be situations where a recording of a strip search may be helpful.

research and development position or division, look at some that do, such as NYPD, Los Angeles County Sheriff's Office, Riverside County Sheriff's Office or Denver Police Department. You can even look abroad to the London Metropolitan Police—an agency with a very robust research arm. Look at the systems that these agencies have evaluated or selected.

There are a few system features that are non-negotiable. Chain-of-custody management and security audit capability are critical. If technology-based evidence does not favor the criminal defense, the defense attacks the technology. Remember the O.J. Simpson trial? The vendor's system must have an unsailable security suite that ensures confidence in the chain of custody, security and integrity of the evidence at every point.

Security and integrity directly relate to the challenge of storage. Body-worn camera video generates an enormous amount of electronic data. Major vendors offer virtually fool-proof cloud-based solutions, or sheriff's offices can rely on their IT department to figure out the storage challenge. Before deciding to tackle the storage issue in-house, ask whether your last major IT initiative came in on time and on budget and how many bugs persisted with subsequent "builds." Also consider that a vendor's cloud storage may actually be more secure and have greater integrity protections than in-house storage.

A recording buffer is also essential, preferably one that your office can set. For example, when my deputy sheriff daughter hits the activation button on her TASER Axon Flex camera, the recording looks back 30 seconds and captures whatever behavior or activity that prompted her to activate the system.

Remember that the easier it is to record and download, the



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Body-worn camera videos can also document the knock-and-announce portion of a warrant execution, and document how deputies make entry and complete the search. That video creates a valuable record in the event of a misconduct complaint, litigation or suppression motion. A word of caution: Watch for inadvertent disclosure of tactics and undercover deputy identification when responding to a request to release a recording of an arrest or search warrant execution.

Agencies and attorneys may fall victim to over-reliance on recording. The video recording cannot substitute for a thorough investigative report. I recently testified as the use of force expert witness for a trial in a major U.S. county where the officer/citizen encounter that ended in the citizen's death was recorded. This encounter, like many police/citizen encounters, happened at night in low light conditions and the participants were moving quickly, making the focus fuzzy, turning the camera from the action and creating a marginally useful recording. Yet the jury expects a Hollywood production quality video when the deputy is wearing a camera. Remember—the public must be educated on the limitations of the camera.

Cameras may also provide information that was not available to a deputy at the moment of making a critical decision. For example, a camera equipped with infrared technology may well “see” in the dark when a deputy cannot. Remember, too, that a point of aim camera may not reach peripheral vision, may not quickly transition from light to dark and vice versa, and may not capture images at the same speed of the human eye. What the camera “sees” is merely a piece of evidence for an investigation. It is not the beginning and the end of collecting all the available facts and all the available statements.

## Policy Issues

Experienced investigators know that some folks just won't talk openly when a recorder is running. The Mesa Police Department spokesman noted, “We have definitely seen people being more reluctant to give information when they know that they are being videotaped.” Your office's body-worn camera policy should give deputies some discretion to turn off the recorder, but require deputies to document, on the recording where possible, why the camera was turned off.

Where lawful, a deputy should activate the recorder any time he or she believes it would be appropriate or valuable to record an incident. Specifically, the Lexipol policy, used by hundreds of sheriff's offices around the nation, recommends that the recorder should be activated in any of the following situations:

- All enforcement and investigative contacts including stops and field interview situations.
- Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all interdiction stops.
- Self-initiated activity in which a deputy would normally notify the Communications Center.
- Any other contact that becomes adversarial after the initial contact.

Office policy should specify that *at no time is a deputy expected to jeopardize his/her safety in order to activate a recorder or change the recording media.*

Deputies should remain sensitive to the dignity of all individuals being recorded and exercise sound discretion to respect privacy by discontinuing recording whenever it reasonably appears to the deputy that privacy interests may outweigh any legitimate law enforcement interest in recording. Requests by members of the public to stop recording should be considered using this same criterion.

When preparing written reports, deputies should review their recordings as a resource (with some limitation discussed below). However, deputies should not use the fact that a recording was made as a reason to write a less detailed report. Office policy should require or encourage supervisors to review relevant recordings any time they are investigating alleged misconduct or reports of meritorious conduct or whenever such recordings would be beneficial in reviewing a deputy's performance. A good supervisor will take the time to randomly review recordings to catch the deputy doing something exceptionally well.

## Legal Issues

Any sheriff's office using body-worn cameras must be prepared to address the legal issues. One of the more obvious issues is the question of citizens' privacy. Some states have all-party (not just two-party) consent laws that may limit deputy/citizen encounter recording. In most states, only one person must know that an encounter is being recorded. Nonetheless, when reasonably possible it still is often good policy, and just fundamentally polite as well, to tell a citizen that the encounter is being recorded. Consider whether the deputy should obtain consent from crime victims before recording an interview or statement.

Be sure to involve the sheriff's legal counsel in the discussion of how body-worn camera recordings will be classified (public, private or protected), stored and made available for court use. Also be sure that the recordings are listed in the sheriff's office records retention schedule. State law may impact the classification and retention requirements.



Statutes designed to protect privacy are already colliding with public records laws impacting body-worn camera video. The Duluth (Minn.) Police Department petitioned the Minnesota Information Policy Analysis Division to classify law enforcement body camera video as private. The state refused, opening the door to media release of video of in-home encounters with mentally ill persons, domestic violence victims and many other persons in vulnerable and intensely private circumstances. Some Minnesota legislators have already questioned the decision and legislative action is likely.

I spoke last year to an international conference on an increasingly common, yet still unsettled, question of whether a deputy should be able to review a video recording of a critical incident (such as a shooting) before he/she completes a statement or interview. Some attorneys or investigators may have a definite preference. Consult with the sheriff's legal counsel on this issue. Attorneys must remember that *Graham v. Connor* prescribes that deputies be judged on the reasonableness of what the deputy perceived, not what the body-worn camera captured.

Civil liberty advocates raise concerns over recording in homes and other places where citizens may wish to retain privacy. Some activists even raise the question of capturing images and cataloging them for use in facial recognition software programs. One advocacy group recently called for a step back until agencies develop a sensible policy that protects individual rights.

The ACLU is a cautious supporter of increased body-worn camera use. According to the ACLU's Jay Stanley, "The challenge of on-officer cameras is the tension between their potential to invade privacy and their strong benefit in promoting police accountability. Overall, we think they can be a win-win—but only if they are deployed within a framework of strong policies to ensure they protect the public without becoming yet another system for routine surveillance of the public."

## Future Developments

Over a decade ago, Douglas Spotted Eagle, a pioneering action videographer and founder of Sundance Media Group, Inc., and Video Audio Software Support Training (VASST),

told me that within a few short years cops like me would be wearing cameras that would record their entire shift. I scoffed, considering both the size of affordable cameras and the size and weight of storage media in 2002. He was right—I was wrong, very wrong. Especially with federal grant initiatives, decent body-worn camera systems are within reach of most law enforcement agencies right now.

Another industry pioneer recently shared his belief that we are not far from the point that body-worn cameras will routinely capture GPS data. In the future, a deputy in a foot pursuit who sees a suspect toss evidence will be able to geotag the location by pressing a button on the body-worn camera. The dispatcher will be able to monitor the officer's location in real time. Deputies responding to assist may even be able to watch and listen to the foot pursuit, helping them better choose how to respond as backup.

Effective policies must keep pace with developing technology. We can't wait for the courts to tell us how to use emerging technology that can help deputies stop crime and help deputies stay alive. The next time that a tech guru tells me what cops will be doing a decade from now, I'll be listening much more intently. 🌟

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